SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 74-66

WILLIAM HETTLEMAN and PALMER D. EDMUNDS,

Petitioners,

vs.

THE CHICAGO LAW INSTITUTE, et al. and THE COUNTY OF COOK, ILLINOIS,

Respondents.

PETITIONERS' REPLY BRIEF

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The brief in opposition, filed September 5, 1974, fails almost completely to meet the petition. In addition, it misstates the record at a number of places. The most urgent matters requiring correction will be dealt with first. The more basic errors will be treated as summarily as possible.

I. The Complaint Was Not For Declaratory Judgment.

P. 8, Br. Opp. states that the complaint filed on December 10, 1965, docketed as 65 CH 6863, was such. This false characterization was made because this Court will not generally invade the province of a state court to find the facts, as a determination in such suit requires. The very first sentence of Judge O'Brien's Opinion (Pet. App. A, p. 1a) stated that "the real questions to be decided are questions of law." The Illinois Declaratory Judgment Act is in the Ill. Rev. Stat., c. 110, sec. 57.1. Nowhere did the complaint refer to this section of the Civil Practice Act, or indicate that adjudication was prayed thereunder. In sum, unsupported allegations were made that sometime in the distant future The Chicago Law Institute (hereinafter referred to as Institute) assets will be wholly lost, destroyed and dissipated by Respondent Cook County's offer to the public of a free law library, wherefore the Institute members would be unwilling to continue to pay annual assessments. Prior to the special meeting of its members on June 18, 1965, a survey was made whether they would continue to pay assessments tho they could use a free law library created by Cook County. Letters of intention poured in without a single dissent. A moment's reflection told them it would take years and years, and several million dollars, for the accumulation of anything approaching a duplication of the Institute's 150,000 volumes.

In *Gilman* v. *Hamilton*, 16 Ill. 225, *cy pres* was sought to be invoked unsuccessfully, the Court saying, at pp. 228-29:

> "I am not able to resist the impression that the chancellor was only asked to become the passive instrument to record the arrangement and agreement of the parties by way of decretal sanction . . . But I might admit even that it never could become sufficient, and

> still it may not show a total failure of the charity; others may contribute other means and funds may be obtained, and the end accomplished."

The Court regarded all the allegations about the direct consequences to befall the charity as purely speculative and conjectural.

If 65 CH 6863 were a declaratory judgment suit, it must have been dismissed as based on conjecture as to whether some future possibility might occur. *State Farm Mutual Auto. Ins. Co.* v. *Morris,* 29 Ill. App. 2d 451, 467-8.

65 CH 6863 began as a class suit, but was amended to strike out the operative words. The summary judgment and decree sought to be vacated are thus null and void for want of indispensable parties. *Southeast Nat'l Bk.* v. *Bd. of Education,* 298 Ill. App. 92, which quoted from Story's *Equity* at pages 115-124.

Of course, *cy pres* is inapplicable to a private corporation, or to a charitable one, or to a charitable trust creating a law library for the mutual benefit of its members or beneficiaries. C. J. Richardson in *The Trustees of Dartmouth College* v. *Woodward,* 1 N.H. 111, 124-25, referring to privileges incident to membership as in incorporated library companies.

II. The Institute Library Was Substantial.

P. 8, Br. Opp., last sentence, seeks to create an impression that review is sought on a trifling matter, only a "nucleus" of a library for Cook County, which does not merit this Court's attention and time. The Record shows that it took almost 100 years to accumulate this "nucleus"; that, at the time of taking it had about 150,000 law books; that it ranked

among the 15 largest in the United States; that it was the largest circulating law library in the world; that it was world renowned, as the 1963 so-called Harrington Report stated. Among its corporate founders in 1857 were alumni of the Harvard and Yale Law Schools. A Harvard alumnus served on its Executive Committee each year from 1858 thru 1948 when some of the clique responsible for conspiring with Cook County to repeal its charter and to take all its assets for a public use without pay, pulled a coup d' etat which cannot be reviewed here. The Institute membership included lawyers of national repute. Its president for some years was Melville W. Fuller, later Chief Justice of this Court. Robert Todd Lincoln was an officer. After the Great Chicago Fire in 1871, Dean Langdell of the Harvard Law School on the request of its alumni Institute members, sent law books to reactivate the Institute. No other law library in the United States, unless it be that of the Library of Congress, has the Session Laws of the Illinois Legislature dating back to colonial days.

It has survived Wars (Civil, Spanish American, Wars I and II, and Korean); panics (1873, 1893, 1907, 1914, 1930, 1947); other competitors, including the Chicago Bar Association which Institute leaders helped found as they did the Chicago Public Library. When 65 CH 6863 was filed prophesying its death by the big paper tiger, it had no loans against any assets and was in a current ratio position of about 90:1. After the Civic Center was completed, in early 1966, the Chicago newspapers carried stories of "Library Without Books" and similar titles. This goaded the physical seizure in August, 1966. "Nucleus", indeed! It was all ready-made to collect the $1 tax on all parties to a suit.

III. No Reviewing Court Passed On Merits.

Judge O'Brien decided (App. A, pp. 1a-3a) that the Institute members had no rights in its assets upon dissolution, and that Sec. 4 of its By-Laws (App. L) conferred an absolute power on its Executive Committee to give all its assets to Cook County, regardless of the almost unanimous vote of its members, at the special June 18, 1965 meeting, against making such gift; against dissolution; and against permission to the Executive Committee to file any suit in Chancery. These rulings are erroneous. Pp. 18-19, Br. Opp., seeks to create the impression that this Court, in Case No. 961, by dismissing the appeal and denying it as certiorari, adjudicated these issues. Appellees therein sought to get this Court to affirm. That appeal was dismissed for want of jurisdiction because the wrong method was used. The petitioners could not allege, due to absence of any opinion, that their federal claims were passed upon and found wanting. In any event, the individual justices of this Court, past and present, have, in speeches in New York, Philadelphia, Texas, Australia, and in articles in numerous law reviews, and in opinions, as has the Court itself, repeated that the denial of certiorari has no legal significance on the merits of the litigation. It would be disrespectful to this Court to cite any citations on this point.

Nor have the Illinois Supreme and Appellate Courts passed on the merits, as will be shown in discussing the more basic issue of non-federal ground.

IV. The Proceeding On August 2, 1968 Was A Travesty On Justice.

P. 9, Br. Opp., last paragraph, makes it appear that petitioners initiated the proceedings before Judge O'Brien on that date. The true facts are stated fully in their main brief

at pp. 16-19, and summarized in the Pet. Cert., pp. 14-15, and the following colloquy, when the parties appeared before Judge O'Brien then, pursuant to respondents' notice, and petitioner Hettleman made the statement of having filed the petition to vacate his decree, preparatory to a request for time in which to object and to set the matter down for hearing on the said petition and motion to dismiss it, confirmed by draft order to that effect which is in the record:

> "Judge O'Brien (glancing at copy of petition, affidavit, and exhibits): What do you expect me to do? Embrace you?
>
> Hettleman: No. Here's a copy of the plaintiffs' Motion to strike the petition.
>
> Cushman: Judge, this is our Motion."

The more basic errors in respondents' brief:

A. Rule 23 was fully complied with.

Pp. 14-19 cite chapter and verse in the Petition to Vacate the Summary Judgment and Decree of each federal claim presented therein. The above colloquy (App. K) was referred to wherein petitioners protested vehemently and constantly to Judge O'Brien and opposing counsel that the proceeding on August 9, 1968 did not constitute a hearing: After Judge O'Brien had refused to read the first of the 40 pages of said petition to vacate, and ended a most intemperate tirade, concluding "I do not propose to review the Supreme Court of the United States. Draw an order denying this Petition. Counsel, stand aside (addressing Hettleman)," the colloquy continued:

> "Hettleman: I want the order to show that there has been no oral argument.
>
> Judge O'Brien: Any way you want it.

(After respondents handed up their draft of the order to him, during the preparation of which Hettleman protested there was no hearing, they replied that they had withdrawn their motion to dismiss the petition to vacate.)

Hettleman: I would like the order to show that there was no hearing and no argument.

Judge O'Brien (signing the draft order): You presented the petition and there was a hearing.

Hettleman: This was a hearing?

Judge O'Brien: Yes."

Pp. 18-19 of the Pet. for Cert. show how the federal claims were raised in the main and supplemental briefs in the Illinois Supreme Court, and how disposed of. After the transfer to the Appellate Court, as the certified record will show, petitioners raised the federal claims and sought by might and main to have that Court pass on the merits, the appeal to it being a matter of right under Art. VI, sec. 7 of the Illinois Constitution. (p. 7 Pet.) That Court must have thought petitioners out of their mind since the incomplete September 22, 1970 order of transfer (App. C, p. 28a), did not show the Supreme Court had categorically denied respondents' motion to dismiss the appeal. (See pp. 3-4 of Pet. for Cert.)

B. The non-federal question and substantiality of the federal questions.

The September 22, 1970 Illinois Supreme Court order (App. B) can be construed as holding that, since the Civil Practice Act, sec. 72 was not complied with (App. J, pp. 35a-36a), a state statute, Judge O'Brien properly denied the petition to vacate. P. 9, Br. Opp. states, last paragraph, that Judge O'Brien denied the petition for non-compliance with said sec. 72. The above colloquy (At's main brief in No. 41807, p. 17, App. K, p. 40a) shows that Judge

O'Brien did not give said sec. 72 as his reason. This Court will decide for itself if there is a fair and substantial ground for the non-federal reason. Sec. 72 was not the basis for the relief prayed in the petition to vacate, and was mentioned only at the end to anticipate the red herring. Second, even if it applied, it was filed within 5 weeks of this Court's mandate being filed in the Cook County Circuit Court. The improperly rejected Hettleman Counteraffidavit to the Motion for summary judgment contained all sorts of pertinent matter that he had not considered on that motion. If he refused to read the first page of the petition to vacate, how could he tell if such matter had been read or seen by him before August 9, 1968? Lastly, sec. 72 is inapplicable if a judgment or decree is attacked for being void, which was the ground of the petition to vacate.

That leaves the question of how the Illinois Supreme Court could regard the many claims of denial of fundamental rights as insubstantial; e.g., the right to have a judge free from what Mr. Justice Rehnquist would call "motivational partiality"; the right to be immune from being a named defendant in a suit which the plaintiffs had no capacity to bring, thus subjecting Hettleman to harassment, expense (*Kerner* v. *Thompson*, 293 Ill. App. 434); the right to be immune from a suit founded on extrinsic fraud; the right to be free from an unauthorized repeal of the charter of a corporation of which petitioners are members and the impairment of contracts due to the Cook County state action in passing a statute on about November 26, 1965 authorizing its president to sign the contract is 65 CH 6865; the right to defend denied by the improper exclusion of the counteraffidavit; the right to an adjudication of their petition to vacate only after the same procedure ac-

corded all litigants similarly situated. In No. 46360, the Illinois Supreme Court must necessarily have decided that the latter constitutional right was insubstantial in ignoring the direct appeal under the 1971 Illinois Constitution, Art. VI, sec. 4 (Pet. Cert. 7).

C. Fraud tolls statutes of limitations.

Br. Opp. makes much of untimeliness. Point V (p. 4) answers itself. The non-final order was not reviewable when entered, but is reviewable when the final one is. The record is replete with fraud that could not be proved because O'Brien, J. denied trial: Liss' "fix"; Coman's advice to seize the Library (now a Judge); Concealment that members of the Executive Committee were appointed June 17, 1965 as Cook County's agents and voted November 12, 1965 to give the Library to their principals. On December 18, 1973, at a conference with Hettleman, Gardner told all present, including Biebel, both of whose names are on the Br. Opp., that he was a member of the Institute who attended the June 18, 1965 special meeting and voted against the Resolutions, and knows this was a "ripoff" in his words. Cook County provides the State's Attorney's budget. This Court should call on Gardner and Biebel to explain their imposition of this Court.

Conclusion

It is hoped that the smokescreen, called "Argument", will not avail to defeat this Court's review.

Respectfully submitted,

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